

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Cr1.R.C.No.924 of 2004
and
Cr1.M.P.No.6371 of 2004

Nagappan

.. Petitioner

Vs.

1.Smt.Anjali
2.Master N.Ranganathan
3.Ms.Radha
4.Master N.Raja
5.N.Devi

.. Respondents

Prayer:- This revision has been preferred under sec 397 & 401 of Cr P C against the order dated 8.1.2004 made in M.C.No.193 of 2000 on the file of the II Additional Family Court, Chennai.

For Petitioner :Mr.G.R.Swaminathan

For Respondents :Mr.G.Ramachandran R1 to R5

JUDGMENT

This revision has been preferred against the order in M.C.No.193 of 2000 on the file of the II Additional Family Court, Chennai. In M.C.No.193 of 2000 the petitioners are one Anjali (wife) and daughters Ms.N.Radha and Mr.N.Devi. The said petition was filed under Section 125 of Cr.P.C., claiming maintenance from the respondent/husband of the first petitioner. In the petition the petitioners have claimed Rs.500/- each for the petitioners No.1 to 3 towards maintenance. The respondent has filed a counter admitting the marriage between the first petitioner and the respondent and also the birth of the other two minor petitioners in the wedlock. According to the respondent/husband, the first petitioner/wife had voluntarily left the matrimonial home in the year 1990 and there was a compromise entered into between the parties before the punchayators and in the panchayat the respondent/husband had paid 1 ½ acres of land, a residential

house besides 4 milch animal, to the first petitioner/wife. The respondent/husband has denied having a monthly income of Rs.10,000/-. But he would admit that he is a mason by profession.

2. The first petitioner/wife had examined herself as P.W.1 and exhibited Ex.P.1, wedding invitation dated 11.2.1990, to show that the marriage between her and the respondent was solemnized on 11.2.1990, and Ex.P.2, the election identity card to show that she/first petitioner is the wife of the respondent.

3.Per contra, the respondent/husband has examined himself as R.W.1 and exhibited Ex.R.1 to Ex.R.3.

4.After going through the evidence let in on both sides, the learned trial judge has come to the conclusion that the petitioners are entitled to a monthly alimony of Rs.1000/- each and accordingly disposed of the petition. Aggrieved by the findings of the learned trial Judge, the respondent/husband has preferred this revision.

5.Now the point for determination in this revision is whether the petitioners are entitled to maintenance and if so to what amount?

6.The Point:- 6(a) The learned counsel appearing for the revision petitioner/husband would contend that even as per the original petition filed by the petitioners there are only three petitioners viz. Mrs.Anjali, Ms.N.Radha & Ms.N.Devi and other two petitioners viz. Master N.Renganathan & Master N.Raja have been subsequently dropped and to that effect an endorsement has been made by the first petitioner-Anjali (wife) in the original petition filed under Section 125 of Cr.P.C., itself. But the learned trial judge without advertting to the above said fact, has ordered maintenance to the first petitioner and also to the petitioners 3 to 5 with a rider to that the 4th petitioner is entitled to maintenance till Novermber-2003 i.e., the date he attained majority.

6(b) The learned counsel for the revision petitioner would further contend that the quantum of amount fixed by the learned trial judge is on the higher side and it is to be reduced taking into consideration the income derived by the revision petitioner/husband. According to the first respondent herein/wife, who was examined as P.W.1, the revision petitioner, who is none other than her husband, is drawing an rental income of Rs.40,000/- per month from 20 houses of his own. Against this evidence, there is an

admission in the cross-examination of R.W.1/husband to the effect that he is getting rental income from his houses. But he would say that he is having only three houses But to show that he is having only three houses and also to show that the rental income derived by him from each of the houses the revision petitioner/husband has not adduced any documentary evidence. But he would admit in the cross-examination that he is a mason and also knows to drive an auto and he is a broker indulged in cattle business. R.W.1/husband would admit in the cross-examination that he gave five milch animals and 1 ½ acres of land at the time of panchayat, which took place in the year 1987 in favour of the first respondent herein/wife. But the land belongs to his mother, but he would say that to show that the land belongs to his months, he has not produced any documentary evidence. It is an admitted case of the revision petitioner/husband that he had married another lady for the second time and through her he has been blessed with two children and that they are also living with him.

6(c) Under such circumstances, it cannot be said that without any rhyme or reason the first respondent herein/wife along with her children had deserted the revision petitioner/husband. When compare to the income of the revision petitioner (rental income from the houses, according to the first respondent herein/wife Rs.40,000/- per month), the quantum of maintenance fixed by the learned trial judge cannot be said to be exorbitant. The learned counsel appearing for the revision petitioner would contend that at least the quantum can be reduced. Taking into consideration the cost of living and the fact that the first respondent/wife is without any source of income and also that there is no male member to assist her and the ordeal in which she has to brought up two minor female children and to provide education to them, the quantum of maintenance fixed by the learned trial judge cannot be said to be on the higher side or exorbitant. But by over site the learned trial judge has ordered maintenance for the 4th petitioner-Master N.Raja also, omitted to note that subsequently his name has been dropped alongwith 2nd petitioner-Master N.Renganathan by the first petitioner herself from the petition filed under Section 125 of Cr.P.C. Point is answered accordingly.

7. In the result, the revision is dismissed, but with the following modification in the order passed in M.C.No.193 of 2000 on the file of the II Additional Family Court, Chennai. The revision petitioner/husband is ordered to pay a monthly maintenance of Rs.1,000/- to each of the petitioners viz. Mrs. Anjali, Ms.N.Radha and Ms.N.Devi from the date of the

petition. Since 3rd respondent herein-Ms.N.Radha has become major on 6.7.2001 (as per Ex.R.1 date of birth in the TC), the revision petitioner is bound to pay maintenance to her (Ms.N.Radha) till 6.7.2001 from the date of petition. The petitioner in M.C.No.193 of 2000 on the file of the II Additional Family Court, Chennai, are entitled to the costs through out. Counsel fee for the respondents herein is Rs.2,500/-. Connected, Crl.M.P.No.6371 of 2004 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The II Additional Family
Court Judge, Chennai.

2.The Principal Family
Court Judge, Chennai.

+1cc to Mr.G.R.Swaminathan,Advocate Sr 42183

ssv
RS (CO)
km/27.7.

Crl.R.C.No.924 of 2004

and

Crl.M.P.No.6371 of 2004

WEB COPY